

**Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301**

In The Matter Of: **Docket No.: 2013-034**
**New Hampshire Real Estate Commission v. Melissa Ann Lesniak
& Nathan W. Dickey**
License Nos.: 061367; 054118
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Melissa Ann Lesniak ("Respondent Lesniak" or "Ms. Lesniak"), and Nathan W. Dickey ("Respondent Dickey" or "Mr. Dickey") in Docket Number 2013-034.

Background Information:

Respondent Lesniak was the listing agent for 30 New Hampshire property listings posted on Northern New England Real Estate Network ("NNEREN") with an expired NH real estate salesperson's license. Respondent Lesniak answered "No" to question #6 on her NH salesperson renewal application: "Have any licenses which you have held to sell real estate been subject to disciplinary action in any state since your last original or renewal application. If yes, attach a letter of explanation disclosing which jurisdiction(s), details of the offense(s), and details of disciplinary action(s).", when she had entered into a Consent Agreement with the Maine Real Estate Commission prior to her NH renewal which required Respondent Lesniak to pay a \$500 disciplinary fine to the State of Maine. Respondent Dickey, as the principal broker for Respondent Lesniak, failed to supervise the activities of Respondent Lesniak who had active real estate listings during the time her license was expired and by signing Respondent Lesniak's Salesperson Affiliation Form on her NH salesperson renewal application where she failed to disclose her disciplinary action against

her Maine real estate associate broker license. Subsequent to an investigation, on October 25, 2013, the Commission issued a Notice of Hearing for a hearing scheduled for December 10, 2013.

On Tuesday, December 10, 2013, at 10:10 a.m., the Commission commenced the adjudicatory/ disciplinary hearing on Complaint File No. 2013-034. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Ms. Lesniak and Mr. Dickey were pro se.

The following exhibits were introduced into evidence and accepted into the record:

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2013-034: pages 1-73.

- Respondent Lesniak's & Respondent Dickey's Exhibits:
Exhibit A – Agent License Renewal Reminders
Exhibit B – Agent License Renewal, "Red Flag" List

There were no witnesses present at the hearing:

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. Respondent Lesniak was first granted a NH real estate salesperson's license on July 19, 2005. At the time of the allegations, Respondent Lesniak's real estate salesperson license #061367 was expired. Respondent Dickey was first granted a NH real estate salesperson's license

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

on May 7, 2001, and a NH real estate broker license on January 19, 2006. At the time of the allegations, Respondent Dickey was licensed as a NH real estate broker, license number 054118.

2. Respondent Lesniak's New Hampshire real estate salesperson license expired on July 19, 2013.

3. On September 4, 2013, Respondent Lesniak was the listing agent for 30 New Hampshire property listings posted on the Northern New England Real Estate Network ("NNEREN") with an expired NH real estate salesperson's license. (Ex. 1, pages 22-68)

4. Respondent Lesniak submitted an Application for Renewal of Salesperson's License which was received at the Commission office and renewed on September 6, 2013. (Ex. 1, pages 16-18)

5. Respondent Lesniak answered "No" to question #6 on her renewal application: "Have any licenses, which you have held to sell real estate been subject to disciplinary action in any state since your last original or renewal application? If "yes", attach a letter of explanation disclosing which jurisdiction(s), details of the offense(s) and details of disciplinary action(s)." (Ex. 1, pg. 17)

6. Respondent Lesniak had entered into a Consent Agreement with the Maine Real Estate Commission for falsely certifying continuing education requirements for renewal of her Maine real estate associate broker license while licensed under Respondent Nathan Dickey of New England Coastal Realty, Inc., dba: Keller Williams Coastal Realty and Respondent Lesniak was required to pay a \$500 disciplinary fine and submit 2 hours of continuing education; this Consent Agreement was approved by the Maine Real Estate Commission on May 10, 2012. (Ex. 1, pages 19-21)

7. Respondent Dickey is the principal broker of New England Coastal Realty, Inc. dba: Keller Williams Coastal Realty, and has failed to supervise the activities of Respondent Lesniak who had active real estate listings during the time her license was expired and by signing Respondent Lesniak's Salesperson Affiliation Form on her renewal application on September 5, 2013, where she failed to disclose her disciplinary action against her Maine real estate associate broker license while

licensed under Respondent Dickey as the responsible broker in Maine of New England Coastal Realty, Inc. dba: Keller Williams Coastal Realty. (Ex. 1, pg. 18)

8. Respondents Lesniak and Dickey in their response to the complaint stated that the allegations were an oversight on their part. (Ex. 1, pg. 73)

9. Respondent Lesniak testified at the hearing that she answered "No" to question #6 on her NH salesperson renewal application because she thought that the question only related to NH licenses not about a Maine license.

10. Respondent Lesniak testified that she must have overlooked where question #6 refers to licenses that have been subject to disciplinary action in any state, and did not intentionally try to conceal her disciplinary action received from the Maine Real Estate Commission.

11. Respondent Dickey testified at the hearing that it is his responsibility to make sure that his agents have current active licenses if they are actively listing property.

12. Respondent Dickey testified that there was no system in place to ensure that all agents' licenses were active where the agent was actively listing property, and that there is a system in place since this complaint to make sure this situation does not happen again.

13. Respondent Dickey explained at the hearing that the staff is now checking the licenses to track who is expiring within 3 months of the expiration of the license to make sure the licensees are notified to make sure they complete their continuing education requirements and renewal license requirements prior to expiration of license. (Ex. A & B)

14. Respondent Dickey admitted at the hearing that when he signed Respondent Lesniak's Salesperson Affiliation Form on her salesperson renewal application received at the Commission on September 6, 2013 that he signed the form without reviewing Respondent Lesniak's renewal application.

Relevant Law:

RSA 331-A:1 Purpose. It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

RSA 331-A:18 Lapse of License.

IV. The rights of the licensee under such expired or lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as a real estate broker or salesperson under an expired or lapsed license.

RSA 331-A:26 Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

I. Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.

XXVII. In the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of licensees and any unlicensed staff.

Rea 401.01 Renewals of License.

(b) Applicants for renewal of a salesperson's license shall use Form 7-RE and provide the following:

(15) Any real estate licenses that have been subject to disciplinary actions in any state since the licensee's last original or renewal application.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. Respondent Lesniak on September 4, 2013 was the listing agent for 30 New Hampshire property listings posted on NNEREN with an expired NH real estate salesperson's license in violation of RSA 331-A:18, IV. (Notice of Hearing, paragraph 5A)

2. Respondent Lesniak failed to disclose on her NH Application for Renewal of Salesperson's License received at the Commission on September 6, 2013, her Maine real estate license that was subject to disciplinary action since her last NH salesperson renewal application by answering "No" to question #6 on the renewal application form, in violation of RSA 331-A:26, I and Rea 401.01 (b) (15). (Notice of Hearing, paragraph 5B and 5C)

3. Respondent Dickey, as principal broker for Respondent Lesniak failed to exercise reasonable supervision over the activities of Respondent Lesniak who had active real estate listings during the time her license was expired and by signing Respondent Lesniak's Salesperson Affiliation Form on her NH salesperson renewal application on September 5, 2013, where she failed to disclose her disciplinary action against her Maine real estate associate broker license while licensed

under Respondent Dickey as the responsible broker in Maine of New England Coastal Realty, Inc. dba: Keller Williams Realty, in violation of RSA 331-A:26, XXVII. (Notice of Hearing, paragraph 5D)

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS **ORDERED** that Respondent Lesniak pay a disciplinary fine in the amount of two-hundred fifty dollars (\$250) for each violation with a total fine in the amount of five-hundred dollars (\$500) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order. Failure to comply with this disciplinary Order will result in the suspension of Respondent Lesniak's real estate license until the fine is paid.

IT IS **ORDERED** that Respondent Dickey pay a disciplinary fine in the amount of two-hundred fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order.

IT IS **FURTHER ORDERED** that Respondent Dickey and all managing brokers licensed under Respondent Dickey to show proof of full attendance at the New Hampshire Real Estate Commission accredited 3-hour continuing education course titled, "Policies and Procedures Manual" by submitting to the Commission the affidavits of the completed course (this continuing education course is to be completed by classroom delivery method only and will not to be counted towards Respondent's or Respondent's managing brokers continuing education requirements for renewal of license) within ninety (90) days of the effective date of this Order. Failure to comply with this disciplinary Order will result in the suspension of Respondent Dickey's real estate license until the fine is paid and the course is completed.

IT IS **FURTHER ORDERED** that the Respondents failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-

A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondents.

IT IS FURTHER **ORDERED** that this Final Decision and Order shall become a permanent part of the Respondents disciplinary file, which is maintained by the Commission as a public document.


IT IS FURTHER **ORDERED** that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER **ORDERED** that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



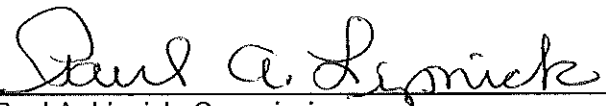
David C. Dunn, Presiding Officer

1/21/2014
Date



Daniel S. Jones, Commissioner

1/21/14
Date



Paul A. Lipnick, Commissioner

Jan. 21, 2014
Date

*\ William E. Barry, Commissioner member, (case evaluator) recused.
James R. Therrien, Commission member, recused.